

Attorneys for Plaintiff

JAMES GUTHRIE, TONY DAVIDSON,) C07-2542-SI
RONALD ZERANGUE, SAMUEL)
RESTER, JOHN GRAY, ELMER)
PAROLINI, WAYNE DFAULT, JESSE)
BEVERLY, JR.,)
)
Plaintiffs,)
vs.)
)
GENERAL ELECTRIC COMPANY,)
TODD SHIPYARDS CORPORATION,)
LOCKHEED MARTIN CORPORATION,)
RAYTHEON AIRCRAFT COMPANY,)
MCDONNELL DOUGLAS)
CORPORATION, and DOES 1-300,)
)
Defendants.)

On June 11, 2007 with Document 10, June 11, 2007 with Document 14 and June 15, 2007 with Document 21, Defendants HAWKER BEECHCRAFT CORPORATION F/K/A RAYTHEON AIRCRAFT COMPANY, MCDONNELL DOUGLAS CORPORATION and

1 GENERAL ELECTRIC COMPANY, respectively, filed Notices to Tag Along Action regarding
 2 the pending Multidistrict Litigation (“MDL”) in the Eastern District of Pennsylvania, seeking
 3 among other things, to move Jurisdiction of this matter to that District. Said Defendants
 4 subsequently mailed notice to the Judicial Panel on Multidistrict Litigation (“JPML”) pursuant
 5 to 28 U.S.C. § 1407.

6 On June 11, 2007, Defendant HAWKER BEECHCRAFT CORPORATION F/K/A
 7 RAYTHEON AIRCRAFT COMPANY filed its declination to proceed before Magistrate Judge
 8 and request for reassignment to a District Court Judge (Document 8). On June 13, 2007, the
 9 *Reassignment Order* (Document 17) assigned this matter to the Honorable Susan Illston and
 10 ordered that “all matters presently scheduled for hearing are vacated and should be renoticed for
 11 hearing before the judge to whom the case has been reassigned.” On June 21, 2007, the *Notice*
 12 (Document 31) set the initial case management conference for Friday, September 21, 2007 at
 13 2:00 p.m. It appears to the parties that neither the *Reassignment Order* of June 13, 2007
 14 (Document 17) nor the *Notice* of June 21, 2007 (Document 31) disturbed the deadlines by the
 15 May 14, 2007 *Order Setting Initial Case Management Conference and ADR Deadlines*
 16 (Document 3), except, of course, moving the CMC Conference date.

17 On June 19, 2007 Defendant HAWKER BEECHCRAFT CORPORATION F/K/A
 18 RAYTHEON AIRCRAFT COMPANY filed its *Defendant Hawker Beechcraft Corporation f/k/a*
 19 *Raytheon Aircraft Company's Notice of and Motion to Sever Pursuant to Fed.R.Civ.P.21*
 20 (Document 27), currently set for hearing on August 17, 2007.

21 On July 29, 1991, the JPML entered an order transferring all asbestos personal injury
 22 cases pending in the federal courts to the United States District Court for the Eastern District of
 23 Pennsylvania, for coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407. That order also
 24 applies to “tag-along actions,” or actions involving common questions of fact filed after January
 25 17, 1991. Such actions are to be transferred to the eastern District of Pennsylvania as part of
 26 MDL 875, for coordinated pretrial proceedings.

27 The JPML has held that a district court has the authority to stay pending a transfer order.
 28 *In re Asbestos Products Liability Litigation*, 170 F. Supp. 2d 1348, 1349 n.1 (J.P.M.L. 2001)

1 (“[T]hose courts concluding that such issues should be addressed by the transferee judge need
2 not rule on them, and the process of 1407 transfer in MDL-875 can continue without any
3 unnecessary interruption or delay.”)

4 The parties agree that it is likely that the JPML will transfer this matter to the Eastern
5 District of Pennsylvania.

6 However, to date, the Clerk of the JPML has not entered a *Conditional Transfer Order*
7 pursuant to JPML Rule 12(a) or filed an order to show cause why the action should not be
8 transferred, pursuant to JPML Rule 13(b).

9 It is likely the dates set forth in the *Order Setting Initial Case Management Conference*
10 *and ADR Deadlines* filed May 14, 2007 (Document 3) and the *Notice* filed June 21, 2007
11 (Document 31) and the deadlines imposed by Rule 26 of the Federal Rules of Civil Procedure,
12 will come to pass before the Clerk of the JPML acts.

13 In addition, Defendant TODD SHIPYARDS CORPORATION has not filed an answer in
14 this matter.

15 The parties make this Motion on the grounds that a stay of this action would (a) promote
16 judicial efficiency, (b) allow consistency in pretrial rulings, and (c) be most convenient to the
17 parties.

18 Due to the pending action by the Clerk of the JPML, the parties hereby STIPULATE to
19 and respectfully request the Court VACATE its *Order Setting Initial Case Management*
20 *Conference and ADR Deadlines* filed May 14, 2007 (Document 3) and *Notice* filed June 21,
21 2007 (Document 31), and that the Court issue an Order STAYING this action pending the
22 outcome of the MDL Panel’s decision on the merits of the transfer.

23 In the alternative, the parties hereby STIPULATE to and respectfully request that the
24 dates set forth in the *Order Setting Initial Case Management Conference and ADR Deadlines*
25 filed May 14, 2007 (Document 3) and the *Notice* filed June 21, 2007 (Document 31) be vacated
26 and all deadlines set by Rule 26 of the Federal Rules of Civil Procedure, be continued pending
27 the outcome of the JPML’s decision on the merits of the transfer. Specifically, these deadlines in
28 this matter include the **August 15, 2007** Rule 26 deadline to meet and confer and file Joint ADR

Certification (set by the *Order Setting Initial Case Management Conference and ADR Deadlines* filed May 14, 2007 (Document 3)), the **August 15, 2007** Deadline to complete Initial Disclosure and Discovery Plan (set by *Order Setting Initial Case Management Conference and ADR Deadlines* filed May 14, 2007 (Document 3)), the **August 29, 2007** deadline to file the Joint Case Management Statement (set by *Order Setting Initial Case Management Conference and ADR Deadlines* filed May 14, 2007 (Document 3)) and the Case Management Conference currently set for Friday, **September 21, 2007** at 2:00 p.m. (set by *Notice* filed June 21, 2007 (Document 31)).

Dated: June 27, 2007

BRAYTON❖PURCELL LLP

/s/ David R. Donadio

By:

David R. Donadio
Attorneys for Plaintiff

Dated: July 2, 2007

FILICE BROWN EASSA & MCLEOD LLP

/s/ Susan A. Ogdie

Susan A. Ogdie, Ted Mechtenberg
Attorneys for Hawker Beechcraft
Corporation f/k/a Raytheon Aircraft
Company, Defendant.

Dated: July 3, 2007

BRYAN CAVE, LLP

/s/ Tyler R. Johnson

Robert E. Boone III, Tyler R. Johnson
Attorneys for McDonnell Douglas
Corporation, Defendant

Dated: July 3, 2007

KNOTT & GLAZIER LLP

/s/ Brian T. Clark

Brian T. Clark, Laura Patricia Yee
Attorneys for Lockheed Martin
Corporation, Defendant

Dated: June 27, 2007

SEDGWICK, DETERT, MORAN &
ARNOLD, LLP


/s/ Derek Johnson

Derek Johnson
Attorneys for General Electric Company,
Defendant

[PROPOSED] **ORDER TO STAY**

IT IS HEREBY ORDERED that the hearing date and deadlines specified in the *Order Setting Initial Case Management Conference and ADR Deadlines* filed May 14, 2007 (Document 3) and *Notice* filed June 21, 2007 (Document 31), are hereby VACATED and that this action is STAYED pending the outcome of the JPML's decision on the merits of the transfer.

Dated: 7/3/07


Susan Illston
United States District Judge

[PROPOSED ALTERNATIVE] **ORDER TO CONTINUE**

IT IS HEREBY ORDERED that the hearing date and deadlines specified in the *Order Setting Initial Case Management Conference and ADR Deadlines* filed May 14, 2007 (Document 3), are hereby VACATED.

IT IS FURTHER ORDERED that the following case management deadlines are continued as follows:

1. Last day to meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan is [set for a date on or after November 1, 2007 to wit:]

_____, 2007;

2. Last day to file Joint ADR Certification with Stipulation to ADR process or Notice of Need for ADR Phone Conference is [set for a date after November 1, 2007 to wit:]

_____, 2007;

3. Last day to complete initial disclosures or state objection to Rule 26(f) Report, file/serve Case Management Statement and file/serve Rule 26(f) Report is [set for a date after November 1, 2007 to wit:] _____, 2007; and,

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4. The Case Management Conference is [set for a date after November 1, 2007 to wit:] _____, 2007 at _____ .m., Courtroom “_____”, _____th Floor, 450 Golden Gate Avenue, San Francisco, California.

Dated: _____

Susan Illston
United States District Judge